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NO. COA01-1484

NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2002

IN RE:

VERTELL MARIA SIMATO and
SABRINA ARKINA HOLDEN,
Minor Children

Cumberland County
No. 00 J 266
No. 00 J 267

Appeal by respondent mother from order entered 11 June 2001 by Judge John W. Dickson in Cumberland County District Court. Heard in the Court of Appeals 12 June 2002.

Brown & Neier, LLP, by William E. Brown for respondent mother Paulette Simato

David Kennedy for petitioner Cumberland County Department of Social Services

BRYANT, Judge.

On 3 May 2000, petitioner Cumberland County Department of Social Services filed a petition to terminate the parental rights of Paulette Simato (respondent mother), Bennie Lee Johnson (father of Vertell), Jamie Holden (father of Sabrina), and John Doe (any other male who has claimed or may claim a parental right).

This matter was heard at the 11 June 2001 term of Cumberland County District Court with the Honorable John W. Dickson presiding. Both the petitioner and the respondent mother were present and represented by counsel. None of the respondent fathers were present.

By order filed 25 July 2001 respondent mother's and fathers' parental rights were terminated pursuant to N.C.G.S. § 7B-1111(a) (1) (abused or neglected juvenile), N.C.G.S. § 7B-1111(a) (2) (willfully left juvenile in foster care for more than twelve months without showing reasonable progress in correcting conditions which led to the juvenile's removal), N.C.G.S. § 7B-1111(a) (3) (willfully failed to pay a reasonable portion of the cost of care for a continuous six month period preceding the filing of the petition), and N.C.G.S. § 7B-1111(a) (5) (prior to the filing of petition father did not establish paternity nor legitimate juvenile). Respondent mother gave oral notice of appeal on 11 June 2001 and formal written notice of appeal on 25 June 2001.

Standard of review

In a termination of parental rights case, the trial court must engage in a two-step process. *In re Pierce*, ___ N.C. ___, ___, 565 S.E.2d 81, ___ (June 28, 2002) (No. 647A01). First, during the adjudication stage, the trial court hears evidence in order to determine if grounds for termination exist. *Id.* at ___, 565 S.E.2d at _____. At least one ground for the termination of parental rights listed in N.C.G.S. § 7B-1111 must be established. *Id.* at ___, 565 S.E.2d at _____. The petitioner bears the burden of proving, by clear, cogent and convincing evidence, that at least one of the grounds for termination has been met. *Id.* at ___, 565 S.E.2d at _____. After ground(s) for termination are established, the trial court must proceed to the dispositional stage where the best interests of the child are considered. *Id.* at ___, 565 S.E.2d

at _____. Termination of parental rights shall be ordered unless the court determines that the best interests of the child require otherwise. *Id.* at ____, 565 S.E.2d at ____; see, e.g., N.C.G.S. § 7B-1110(a) (2001).

The standard of review on appeal is whether the trial court's findings of fact are supported by clear, cogent and convincing evidence, and whether those findings support the trial court's conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed, review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

I.

Respondent mother contends that the evidence was insufficient to support the trial court's findings in support of its conclusion to terminate her parental rights. We disagree. N.C.G.S. § 7B-1111(a)(2) (1999)¹ provides that a trial court may terminate parental rights upon a finding that:

The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

¹ N.C.G.S. § 7B-1111(a)(2) was amended by 2001 N.C. Sess. Laws 208, § 6, and removed the language "within 12 months" as it related to showing reasonable progress in correcting conditions which led to removal of the child. The amendment was effective for cases pending or filed on or after 1 January 2002.

See also *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). In addition to finding that the child has been left in foster care for more than twelve months, the trial court must also find that the respondent has failed to make reasonable progress within twelve months in correcting the conditions that led to the removal of the child. *In re Pierce*, ___ N.C. at ____, 565 S.E.2d at ____.

Willfulness, under this section, means something less than willful abandonment. *In re Oghenekevebe*, 123 N.C. App. at 439, 473 S.E.2d at 398; see, e.g., *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). Willfulness can be found when a minor child is left in foster care over twelve months and the respondent has failed to show that reasonable progress has been made to reunite respondent with the minor child. *In re Oghenekevebe*, 123 N.C. App. at 440, 473 S.E.2d at 398.

In the case at bar, the trial court's findings as relate to the respondent mother read in pertinent part:

That the Respondents have neglected the minor children, within the meaning of N.C.G.S. § 7B-101(15), in that the minors have not received proper care, supervision or discipline from their parents.

The minors were Adjudicated physically abused in Chesterfield County, South Carolina, on June 25, 1990; The minors were Adjudicated Neglected and Dependant [sic] in Cumberland County, North Carolina, on 5/12/93; The minors were Adjudicated Neglected in Cumberland County in May of 1998 due to physical altercations with the children and due to mother's mental health problems.

That the minor children have been placed in Cumberland County Department of Social

Services custody consecutively for over 12 months. The children have been in foster care cumulatively over five years.

Mother has failed to successfully complete services previously ordered by the court.

That the Respondents have willfully left the minor children in foster care for more than twelve months without showing to the satisfaction of the Court that reasonable progress under the circumstances has been made within twelve months in correcting those conditions which led to the removal of the children.

. . .

That the minor children have been placed in Cumberland County Department of Social Services custody for over 12 months and that the Respondents for a continuous period of six months next preceding the filing of this Petition, failed to pay a reasonable portion of cost of care for the minor children although physically and financially able to do so.

In support of its findings, the trial court relied on testimony of social workers involved with the respondent mother's children during the twelve-month period of 3 May 1999 to the time the petition for TPR was filed on 3 May 2000. The evidence tended to show that respondent mother had previously undergone at least three psychological evaluations and as of 3 May 2000, the date of the filing of the TPR petition, she had not completed any of the recommendations made in those evaluations. Tara McNeil Snavelly, a social worker with DSS, testified that there had been little contact between respondent mother and the investigator handling the case. Snavelly further testified that DSS did not always know where respondent mother was living for the twelve months prior to the

filing of the petition for TPR. Snavelly testified that during the twelve-month period, the respondent mother reported that she was working at various points of time, but her employment was not verified. Further, a report dated 14 May 2001 and prepared by the guardian ad litem states that respondent mother made no attempt to contact DSS regarding the minor children's care and well-being. The report also states that respondent mother "continues to be subject to her own impulses" and "does not cooperate with treatment to stabilize her situation"

We find, therefore, that it is clear from the evidence presented that the trial court's conclusion that the respondent mother willfully left her children in foster care for more than twelve months and could not show to the satisfaction of the court that reasonable progress had been made within twelve months to correct the conditions which led to the removal of the children, is supported by the record. This assignment of error is overruled. We need not address the remaining grounds for termination as a finding of any one ground under N.C.G.S. § 7B-1111(a) is sufficient to support termination. *In re Huff*, 140 N.C. App. at 293, 536 S.E.2d at 842.

II.

Respondent mother next argues that the trial court abused its discretion in terminating her parental rights. We disagree.

"The trial court's decision to terminate parental rights, if based upon a finding of one or more of the statutory grounds supported by evidence in the record, is reviewed on an abuse of

discretion standard." *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174 (2001), *review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

Once grounds for a TPR disposition are established, the trial court *shall* order said termination unless it is in the children's best interest for termination not to be ordered. See N.C.G.S. § 7B-1110(a). Here, the trial court found that grounds for termination existed pursuant to N.C.G.S. § 7B-1111(a) (1), (2), and (3), as relates to respondent mother. Moreover, this Court has concluded that sufficient evidence exists to support at least one ground of TPR pursuant to the trial court's order.

The trial court concluded that the entry of the TPR order was in the best interest of the minor children. Respondent mother has not demonstrated that the trial court's termination order amounted to an abuse of discretion. Therefore, this assignment of error is overruled.

AFFIRMED.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).